Supreme Court, U.S.
FILED

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OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1998

In re Arthur Arlo: Hayden, Jr.

Petitioner, pro se

v.

United States Court of Appeals for the Ninth Circuit, et al.

PETITION FOR WRIT OF HABEAS CORPUS

Arthur Arlo: Hayden, Jr.
P.O. Box 1167
Gridley, CA 95948
(530) 846-6808

PETITION FOR WRIT OF HABEAS CORPUS

Arthur Arlo: Hayden, Jr., petitioner herein, appearing in propria persona petitions this Court to issue a writ of habeas corpus, directed to respondents, and shows as follows:

1. QUESTIONS PRESENTED

1. Does the petitioner lack adequate remedy to a "Plain, Speedy or Adequate Trial on the Merits"? How can petitioner gain access to "His Day in Court"? If petitioner's appeal and reconsideration was denied by the U.S. Court of Appeals then where must the petitioner go to obtain justice?
2. Petitioner previously attempted to seek relief from the United States District Court for the Eastern District of California by an uncontested Writ of Habeas Corpus filed on April 30, 1997 which was denied by Court Order entered on October 27, 1997. This matter was presented to the Supreme Court of The State of California, on April 9, 1997 and to the California Court of Appeals Third Appellate District, on February 13, 1997. Petitioner filed his Petition of Alternative Writ of Prohibition with the Superior Court of the State of California in and for the County of Nevada on November 16, 1996 which was denied on February 27, 1997. Again petitioner asks how can he gain access to "His Day in Court"? Has Petitioner exhausted all remedies in the state courts? What more could be done?
3. Can the trial court Judge, C. Anders Holmer, Truckee Municipal Court, proceed with trial when the Petitioner had filed a Petition for Removal to the United States Federal District Court, Eastern District, on November 19, 1996, and the service of said petition was perfected on respondents prior to the trial on November 20, 1996? How can a **disqualified judge for cause**, proceed with trial and sentencing? How can Petitioner gain "Due Process and Equal Protection Under the Law" from the Courts?
4. Can the Petitioner appeal a decision of the Truckee Municipal Court when that case had, prior to trial, been removed to United States Federal

District Court, Eastern District? How can Petitioner appeal a decision when the court lacked jurisdiction and was in direct violation of accepted court procedures?

5. Can the trial court Judge, C. Anders Holmer, Truckee Municipal Court, proceed with prosecution in direct violation of a United States Federal District Court's Order by The Honorable Lawrence K. Karlton, Chief Judge Emeritus, which states, "For all the reasons state above, this action is hereby **REMANDED** to the Nevada County Superior Court", dated December 16, 1996?

6. Can the trial court Judge, C. Anders Holmer, Truckee Municipal Court, proceed with prosecution of the same action stated above when a Writ of Prohibition has been properly filed in the Nevada County Superior Court on November 15, 1996 as Case Number TS 96/671 and was perfected upon the Truckee Municipal Court on November 20, 1996?

7. Can the Petitioner appeal the one year five months "non-response" of the Nevada County Superior Court when the case had been remanded to that court by the United States Federal District Courts Order on December 16, 1996? Can Petitioner get his day in court or has he been denied all access to the court? How can the Nevada County Superior Court proceed with this case when it has failed to hear or try this case within a reasonable time as of this date.

8. How can Petitioner secure uniformity of decision when the state courts denies Petitioner a fair hearing on the merits? Where is the justice for all under the law or is it buried six feet deep in red tap, technicalities and legal gibberish?

9. Can a Judge of a Municipal Court, C. Anders Holmer, completely violate a United States Federal District Courts Order by The Honorable Lawrence K. Karlton, Chief Judge Emeritus?

10. Can the Acting Presiding Judge, Blease, of the Third Appellate Court ignore the long standing cases where under the doctrine of stare decisis, prohibition will issue in a criminal case on a showing of excess of jurisdiction by the Municipal Court?

11. This case in it's entirety is based on Truckee Municipal Court of the County of Nevada refusing to follow long standing court procedures and statutes! Who is guilty of the greater crime, the Petitioner for want of a fair unbiased trial on the merits or the Judge, C. Anders Holmer, **a disqualified judge for cause,** who knowingly and wantonly completely violates the United States Federal District Courts Order by The Honorable Lawrence K. Karlton, Chief Judge Emeritus?

Petitioner should be afforded the opportunity to obtain a fair hearing in an impartial manner and present evidence, and with findings supported by the totality of the relevant evidence presented, in essence, **"a meaningful hearing on the merits in a court of competent jurisdiction"!!!**

12. Petitioner has applied to the UNITED STATES DISTRICT COURT Eastern District of California for a writ of habeas corpus as stated above. Said petition was never answered or contested by Respondents, C. Anders Holmer or Truckee Municipal Court. The petition was filed on April 30, 1997 and was denied by Court Order entered on October 27, 1997. How can a the U.S. District Court deny an uncontested petition? Is Marshall Law now in effect through the United States?

13. The United States Constitution Article 1, Section 9, Clause 2 states, "The privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of rebellion or invasion...." Is the Boston Tea Party rebellion still in process? Is the Bay of Pigs Invasion in full swing? Is the U.S. still bombing Cambodia? The United States Supreme Court should exercise its discretion in the **Demand of Justice** and grant this writ.

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JURISDICTION

Jurisdiction to grant the writ of habeas corpus sought by petitioner herein, is conferred on this Court by the provisions of Section 2241(a), Title 28, United States Code, and Rule 20 of the Rules of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A. CONSTITUTIONAL PROVISIONS

United States of America

Article I, Section 9, Clause 2, ... The privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.

Article III, Section 1, ... The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, ...

Article III, Section 2, clause 1, ... The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;...to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Article IV, Section 2, Clause 1, ... The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states

Article VI, Clause 2, ... This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme

law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary not withstanding.

Article VI, Clause 3, ... The Senator and Representatives before mentioned, and the member of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Amendment I, ... Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceable to assemble, and to petition the government for a redress of grievances.

Amendment IV, ... The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V, ... No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment or a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of live or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI, ... In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII, ... In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in a court of the United States, than according to the rules of the common law.
Amendment VIII, ... Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
Amendment IX, ... The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.
Amendment X, ... The power not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
Amendment XIV, Section 1,.... All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State of California
Article I, Section 1, ... All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.
Article I, Section 3, ... The people have the right to instruct their representative, petition government for redress of grievance, and assemble freely to consult for the common good.
Article I, Section 7, Clause (a)... A person may not be deprived of live, liberty, or property without due process of law or denied equal protection of the laws; ....

Article I, Section 11, ... Habeas corpus nay not be suspended unless required by public safety in cases of rebellion or invasion.

Article I, Section 13, ... The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and thing to be seized.

Article I, Section 15, ... Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal cause to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

Article I, Section 28, Clause (d) ... Right to Truth-in-Evidence. Except as provided by statute hereafter enacted by a two-thirds vote of the membership in each house of the Legislature, relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post convictions motions and hearings, or in any trial or hearing in a juvenile for a criminal offense, whether heard in juvenile or adult court. Nothing in this section shall affect any existing statutory rule of evidence relating to privilege or hearsay, or Evidence Code, Sections 352, 782 or 1103. Nothing in this section shall affect any existing statutory or constitutional right of the press.

Article III, Section 1, ... The State of California is an inseparable part of the United State of America, and the United States Constitution is the supreme law of the land.

Article III, Section 3.5, ... An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;...

B. STATUTES

United States of America
28 U.S.C.A. Sec. 1446(d).
28 U.S.C.A. Sec. 2241.

State of California
Code of Civil Procedure

Section 170.1, Clause (a) A judge shall be disqualified if any one or more of the following is true:

(6) **For any reason**

(A) the judge believes his or her recusal would further the interests of justice,

(B) the judge believes there is a substantial doubt as to his or her capacity to be impartial,

(C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

Section 170.1, Clause (c) At the request of a party,...

Section 170.3, Clause (b) (2) There shall be no waiver of disqualification where the basis therefor is either of the following:

(A) The judge has a personal bias or prejudice concerning a party.

Section 170.3, Clause (c) (5) No judge who refuses to recuse himself or herself shall pass upon his or her own disqualification or upon the sufficiency in law.

STATEMENT OF THE CASE

1. This petition is filed pursuant to the authority to issue a writ of habeas corpus vested in this Court by the provisions of Section 2241(a), Title 28, United States Code, and Rule 20 and Rule 30 of the Rules of this Court, to obtain petitioner's release from respondent's judgment and bench warrant. Judgment and notice of bench warrant are reproduced in the appendix "C" & "I" to this petition.

2. Petitioner was tried and sentenced by the **disqualified judge** C. Anders Holmer, by order dated November 17, 1996, in case number T95/589M. The sentencing order is reproduced in the appendix "C" to this petition.

3. Petitioner alleges that he was deprived of his constitutional rights in the conduct of the trial resulting in his conviction aforesaid, in that:

a) The motion to disqualify Judge C. Anders Holmer for cause was based on Financial Interest in Subject Matter or Party (CCP sec. 170.1(a)(3)) and Bias or Prejudice (CCP sec. 170.1(a)(6)) Judge, C. Anders Holmer, refused to recuse himself after being disqualified by motion in open court. Judge, C. Anders Holmer dismissed the motion of his own disqualification, see Appendix "H" **U. S. Constitution, Article III, Section 1. & California Code of Civil Procedure, Section 170.1 (a) (3), 170.1 (A) (6), 170.1(c), 170.3 (b) (2), 170.3 (c) (5).**

b) C. Anders Holmer denied Petitioner the rights of "Due Process, To be Heard on the Merits and Equal Protection Under the Law." **U.S. Constitution, Article VI, Clause 2; Amendment V; IX; X; & XIV, Section 1. California Constitution, Article I, Section 7, Clause (a); Article I, Section 15: Article 1, Section 28, Clause (d); & Article III, Section 3.5, Clause (a).**

c) Right of Writ of Habeas Corpus was denied Petitioner by the Nevada County Superior Court (see APPENDIX D (a)) and the U.S. District Court, Eastern District of California (see APPENDIX B). **U. S. Constitution, Article I, Section 9, Clause 2, Article VI, Clause 2; & California Constitution, Article I, Section 11.**

d) Right to a speedy trial denied by Nevada County Superior Court. **U. S. Constitution, Amendment VI.**

e) Right to enjoy all the privileges and immunities of citizens in the several states, i.e. Uniformity of Decisions. **U. S. Constitution, Article IV, Section 2**

f) Right to be secure in my person, houses, papers and effects .... and no warrants shall issue, but upon probable cause, supported by oath or

affirmation. (see APPENDIX I) **U. S. Constitution, Amendment IV.**

g) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. (see APPENDIX I) **U. S. Constitution, Amendment VIII.**

4. Petitioner has applied to the UNITED STATES DISTRICT COURT Eastern District of California for a writ of habeas corpus as stated above. Petition was never answered or contested by Respondents, C. Anders Holmer or Truckee Municipal Court. Petition was filed on April 30, 1997 and was denied 6 **months later** by Court Order entered October 27, 1997. How can a the court deny an uncontested petition? (see APPENDIX B)

5. Petitioner has exhausted all available remedies in the state courts. This matter was presented to the Supreme Court of The State of California, for Review on April 8, 1997, and denied (see APPENDIX G). A Petition for Writ of Prohibition was filed with the California Court of Appeals Third Appellate District, on February 13, 1997, and denied (see APPENDIX E). Petitioner filed his Petition of Alternative Writ of Prohibition with the Superior Court of the State of California in and for the County of Nevada on November 16, 1996 which was denied on February 27, 1997, (see APPENDIX D (b)).

6. There are also included in the Appendix hereto the following papers which are essential to an understanding of the instant petition:

a) Striking of Motion to Disqualify Judge Holmer ..APPENDIX "H"

b) Bench Warrant issued by

Truckee Municipal Court .....APPENDIX "I"

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

On November 19, 1996, Petitioner, Arthur Arlo: Hayden, Jr. filed in the United States District Court, Eastern District of California, a Petition for Removal of Criminal Action Case T95-0589M. Service was perfected and Said Removal was served timely upon Respondents C. Anders Holmer and Truckee Municipal Court of the County of Nevada, State of California, prior to trial. On November 20, 1996 Judge C. Anders Holmer refused to accept that he no longer had jurisdiction and proceeded with trial. Petitioner objected, contending that the court was without jurisdiction pursuant to the removal statutes. Petitioner adamantly stated that Judge C. Anders Holmer had been disqualified for cause on July 15, 1996.

Administrative due process requires (1) opportunity to be heard: (2) due notice of hearing; (3)fair conduct of hearing; (4) support in record for

decision: (5) submission of proposed findings and tentative report, and (6) opportunity to file and to be hear upon exception to report. **Ideal Farms, Inc., vs. Benson, D.C.N.J. 1960, 181 F. Supp. 62, affirmed 288 F. 2d. 608. Cert. Den. 83 Sup. Ct. 1087, 372 U.S. 965, 10 L. Ed. 2d 128.**

The right of Petitioner to be afforded the opportunity to obtain a fair hearing in an impartial manner and present evidence, and with findings supported by the totality of the relevant evidence presented, in essence, "**a meaningful hearing on the merits in a court of competent jurisdiction**" is the point in question. The judges, both of the U.S. Supreme and inferior courts, shall hold their offices during good behavior, ...**United States Constitution, Article III, Section 1.** C. Anders Holmer, was **disqualified for cause** by Petitioner on July 15, 1996, in open court. **California Code of Civil Procedure, Section 170.1 (a) (3), 170.1 (A) (6), 170.1(c), 170.3 (b) (2), 170.3 (c) (5).**

Petitioner filed a Petition of Alternative Writ of Prohibition in the Superior Court of the State of California for the County of Nevada on November 15, 1996 raising the Constitutional issues of "Due Process, Disqualification of Judge, To Secure Uniformity of Decision, To be Heard on the Merits and Equal Protection Under the Law." Said Petition was denied on November 18, 1996.

Petitioner has been denied his right to liberty without due process of law. Judge C. Anders Holmer, refused to recuse himself and proceeded with the trial. On November 19, 1996, Petitioner, Arthur Arlo: Hayden, Jr. filed in the United States District Court, Eastern District of California, a Petition for Removal of Criminal Action Case T95-0589M. Service was perfected and said Removal was served timely upon C. Anders Holmer and Truckee Municipal Court prior to the trial. Petitioner raised the legal questions of: "How to get His day in Court", "Disqualification of Judge", "Due Process and Equal Protection Under the Law". **Title 28 U.S.C.A. Sec. 1446(d)**

Judge C. Anders Holmer, completely ignored Petitioner's objections and proceeded with trial on November 20, 1996. Prior to the Sentencing Hearing, on December 17, 1996, Petitioner, and the trial court received the Remand Order from **The Honorable Lawrence K. Karlton, Chief Judge Emeritus of the United States Federal District Court**, which stated, "For all the reasons state above, this action is hereby **REMANDED** to the Nevada County Superior Court.

IT IS SO ORDERED."

The trial and the sentencing was completed on documents of the Municipal Court, thus proving the court of origin of the judgment and sentencing and

by the same **disqualified judge**. On February 28, 1997, the Nevada County Courts in Truckee mailed a Notice of Violation and an Order to Appear to Petitioner. Truckee Municipal Court and Judge C. Anders Holmer is continuing to prosecute Petitioner.

On March 28, 1997, Nevada County Sheriff, Troy E. Arbaugh, Sheriff-Corner mailed a form of notice to Petitioner to the effect that Truckee Municipal Court had issued a warrant for Petitioner's arrest. Bail was set at $25,000.00.(see APPENDIX I) This is a denial of petitioner's rights as guaranteed under the **U. S. Constitution, Amendment IV & VIII.**

Clear language of general **removal** statute provides that state court loses **jurisdiction** upon filing of petition for **removal.** The State Court loses all jurisdiction and may not proceed with discovery, try the case, or issue judgments or orders to the parties. **28 U.S.C.A. Sec. 1446(d). Resolution Trust Corp. v. Bayside Developers, 43 F.3d 1230, as amended C.A. 9 (Cal.) 1994.**

Removal petition deprives state court of **jurisdiction** as soon as filed and served on state court, but **jurisdiction** returns to state court when remand order is filed and served on state court, unless order is stayed. **People v. Bogart, 86 Cal. Rptr. 737, 7 C.A. 3d 257 Cal. App 2 Dist. 1970.**

The court in McCauley v. Consolidated Underwriters (1957, Tex Civ. App) 301 SW 2d 181, revd per curiam 157 Tex 475, 304 SW 2d 265, held that under 28 USC Section 1446, a case is removed from the jurisdiction of the state court for all purposes upon compliance with the procedural steps therein, until and unless it is remanded to such state court, and that until and unless the case is remanded no valid proceedings can be taken in the state court at any time following the filing of such petition and bond, the giving of notice thereof to all adverse parties, and the filing of a copy of the petition with the clerk of the state court. Here all parties were given notice that they no longer had jurisdiction to act, by the service of Petitioner's petition for removal.

After removal, jurisdiction of state court absolutely ceases and state court has duty not to proceed any further in case; subsequent proceedings in state court on case are void ab initio. **Maseda v Honda Motor Co. (9188, CA11 Fla) 861 F2d 1248.**

The Petitioner has been denied his right of the Writ of Habeas Corpus to restrain the actions of a State Court Judge, C. Anders Holmer of The Trial Court. Those actions were in complete excess of Jurisdiction and in violation of The United States Federal District Court's Order by The Honorable Lawrence K. Karlton, Chief Judge Emeritus. **United States**

Constitution, Article I, Section 9, Clause 2.

For purposes of writs of habeas corpus, prohibition, or certiorari, "jurisdiction" is not limited to its fundamental meaning, and judicial acts may be restrained or annulled if determined to be in excess of court's powers as defined by constitution, statute, or court rules. West's Ann. Pen. Code, Sec. 1487, subd. 1. Cal. 1964.

A person is "unlawfully imprisoned or restrained of his liberty" (California Penal Code Section 1473) when the judgment or order under which he is held in custody was without or in excess of jurisdiction. (California Penal Code Section 1487(1).) **A habeas corpus will lie where criminal proceedings was without or in excess of jurisdiction** and will lie where criminal proceedings were fundamentally unfair. **In re Bell (1942) 19 C. 2d 488, 494, 122 P. 2d 22; Stanf. L. Rev. 769**

In the instant case at bar, **the points**, as stated above clearly demonstrate that C. Anders Holmer, the Trial Court Judge, exceeded his jurisdiction in proceeding with trial and sentencing therefor there is no question that the **Habeas Corpus will lie.** Petitioner had filed a Petition for Writ of Habeas Corpus with the Superior Court of the State of California in and for the County of Nevada, on March 19, 1997 at 1:45 p.m. as case number 57804. Said Writ of Habeas Corpus was perfected when served upon Truckee Municipal Court on March 20, 1997.

Petitioner is being denied his Constitutional right to a speedy trial by the Nevada County Superior Court. The Federal District Court Remanded the action to the Nevada County Superior Court on December 16, 1997. The Superior Court has not set the action for hearing nor contacted the Petitioner as to the status of the action. The Petitioner cannot appeal that which has not been decided even though a year and five months have transpired since the remanding. The Superior Court is ignoring its legal responsibility and Petitioner can do nothing. **United States Constitution, Amendment VI**.

Petitioner is being denied the rights as described in **Article IV, Section 2 of the Constitution of the United States**. That is to say that he is being denied a uniformity of decisions as compared to the decisions of other court judges. The denial of Petitioner' Petition for Extraordinary Remedy of Alternative Writ of Prohibition by Acting President Judge Blease is not in keeping with long standing decisions of the other California State Courts of Appeal of similar fact circumstances. See APPENDIX E attached. A writ of prohibition is used to restrain judicial action in excess of jurisdiction where there is no other adequate remedy. **Estate of Linnick, 217 Cal. Rptr. 552, 171 C.A. 3d 752 Cal. App. 2 Dist. 1985** In the case of

Castaneda v. Municipal Court In and For City And County of San Francisco, 102 Cal. Rptr. 230, 25 C.A. 3d 588, the court put forth that prohibition will issue in a criminal case on a showing of excess of jurisdiction.

Any acts which exceed power of court, whether that power be defined by constitutional provision, statutory declaration, or rules developed by courts and followed under doctrine of stare decisis, are in **"excess of jurisdiction,"** insofar as such term is used to indicate that those acts may be restrained by prohibition. City Council of City of Santa Monica v. Superior Court of Los Angeles County, 21 Cal. Rptr. 896, 204 C.A. 2d 68 Cal. App. 2 Dist. 1962

Act is **"in excess"** of jurisdiction, such that prohibition will lie, if act exceeds defined power of court or other tribunal in any instance, whether that power be defined by constitutional provisions, express statutory declaration, or rules developed by courts and followed under doctrine of stare decisis. West's Ann. Ca. C. C. P. Sec 1102, Agricultural Labor Relations Bd. v. San Benito County Superior Court (Heublein, Inc.), 34 Cal. Rptr. 2d 546, 29 C.A. 4th 688, rehearing denied Cal. App. 6 Dist.

For **the trial court** to be acting "without or in **excess of jurisdiction"** as that term is used in relation to remedy of prohibition it is not necessary that there be lack of **jurisdiction** over the subject matter or parties in fundamental sense but only that there be **want** or **excess** of power of court as defined by statute or rules developed and followed under doctrine of stare decisis. Corona Unified Hospital Dist. v. Superior Court of Riverside County, 395 P.2d 817, 40 Cal. Rptr. 745, 61 C.2d 846 Cal. 1964

Service upon the respondents of Petitioner's Petition for Removal was perfected upon Respondents before the trial commenced on November 20, 1966 at 8:40 a.m. and all parties were notified that they lacked jurisdiction to proceed with trial.

Thus, in Master Equipment, Inc. v. Home Ins. Co. (1972, DC Pa) 342 F Supp 549, the court stated that where the defendant had filed a proper removal petition and had forwarded a copy thereof to counsel for plaintiffs, then filing of the copy of the petition for removal by the defendant with the clerk of the state court was without jurisdiction grounds to proceed any further with the controversy. The court recognizes that after an action has been removed to a federal court, **the state court is without jurisdiction to act further in the cause, and stated that all proceedings in the state court are held in abeyance.**

Petitioner does not have the right to appeal this case because the trial was void and mutt as well as the sentencing. Petitioner has applied to the

United States District Court, by way of a Petition for Removal with hope to get a fair trial but the Remanded order by The United States Federal District Courts Order by The Honorable Lawrence K. Karlton, Chief Judge Emeritus, to the Superior Court of Nevada County was ignored.

Appeal is Inadequate Remedy to challenge jurisdiction. Where the court does not have personal jurisdiction over Petitioner, the remedy of appeal from a default judgment is not an adequate remedy because the act of appealing will amount to a general appearance and waiver of Petitioner's claim of lack of jurisdiction (Jardine v Superior Court 91931) 213 Cal 301, 304-305, 2P 2d 756; **Bakersfield Hacienda Inc. v Superior Court (1962) 199 Cal. App. 2d 798**, 802-803, 18 Cal. Rptr 812).

A Petition for Writ of Prohibition was filed with the California Court of Appeals Third Appellate District, on February 13, 1997. Said Petition was denied February 27, 1997 without any further explanation for the denial. Said petition raised the legal Constitutional issues of "Due Process, Disqualification of Judge, Access to the Courts, Securing Uniformity of Decision, To be Heard on the Merits and Equal Protection Under the Law."

This matter was presented to the Supreme Court of The State of California, for Review on April 8, 1997. The clerk of the Supreme Court returned the petition unfiled. Since when does a clerk hold judicial powers?

A few cases have permitted a party to employ a writ after the time for an appeal expired when the lower court acted in excess of it jurisdiction or when fundamental constitutional rights were violated. The Supreme court has also permitted a writ to be heard on its merits when uncertainty had previously existed regarding the appealability of the order in question. Mauro B. v. Superior Court (1991) 230 Cal. App. 3d 949,954, 281 Cal. Rptr. 507 (citing cases).

The writ of habeas corpus shall extend to a prisoner in custody if he is attacking the validity of that custody (Title 28 U.S.C.S. section 2241). The custody requirement is the statutory prerequisite for the exercise of the habeas corpus jurisdiction conferred upon the federal courts **(United States v Bradford (1952, CA 2 NY) 194 F2d 197, cert den 343 US 979, 96 L Ed 1371, 72 S Ct 1079 and cert den 347 US 945.)**

Troy E. Arbaugh has stated by his notice dated March 28, 1997, that the **Truckee Municipal Court** has issued a warrant for the arrest of Petitioner. **The Petitioner is in custody because the warrant for his arrest is a restraint not shared by the public generally (Jones v Cunningham (1963) 371 US 236, 9 L Ed 2d 285, 83 S Ct 373, 92 ALR 2d 675).**

In the case at bar, **the Federal Court does have jurisdiction because:** 1) the custody requirement is satisfied by the arrest warrant issued by the

Truckee Municipal Court on March 28, 1997; 2) the warrant is based on a trial and sentencing in direct violation of The United State Federal District Courts Order by the Honorable Lawrence K. Karlton, Chief Judge Emeritus; 3) Petitioner has been denied his Constitutional rights to a fair trial on the merits by a court of competent jurisdiction; 4) Petitioner's Constitutional Rights to due process is in complete violation; 5) Petitioner has been denied his Constitutional Rights to fair access to a court of law and 6) Petitioner has exhausted every available state remedy by filing with the Superior Court, the Appellate Court and the Supreme Court Extraordinary Writs which all served notice to the courts of the violations and direct disregard of a Federal Court Order by the **disqualified** Truckee Municipal Court Judge, C Anders Holmer.

All three courts have refused to give Petitioner his day in court. Petitioner can not be denied his day in court for failure to comply with precise niceties of technical procedure **(Holiday v Johnson (1941) 313 US 342, 85 L Ed 1392, 61 S Ct 1015)**. The clerks of the above two higher courts have acted in a judicial capacity as "judges-in-fact" by denying Petitioner access to that court without any legal judge reviewing the file for a determination on the merits.

Petitioner has been denied the constitutional right to **"a meaningful hearing on the merits in a court of competent jurisdiction"!!!** A Pro Se litigant can not be denied his right to a hearing on the merits of claim due to ignorance of technical procedural requirements, i.e. Cal. Rules of Ct. Rule 24, Timely filing of Denial vs Decision. **Balistreri v. Pacifica Police Dept., 901 F. 2d 696 (1988).** The case at hand is a denial of unalienable rights guaranteed by the United States Constitution.

CONCLUSION

The Petitioner has constantly asked for "His Day in Court to be heard on the merits by a fair, impartial and competent court. He has been either ignored or denied his due process. The Municipal Court Judge will not follow court developed rules or a Federal Court Order. The Superior Court will not bring the action to be heard. The Third Appellate Court will not follow long standing decisions concerning prohibition of lower courts exceeding their jurisdiction. Technical procedural requirements and court clerks are becoming the real judges or does it just seems to be the process? Petitioner has utilized every possible remedy available to him but to no avail.

WHEREFORE, Petitioner, Arthur Arlo: Hayden, Jr., respectfully requests for the reasons herein advanced, and on the authorities cited, that this Court:

1. Issue a Writ of Habeas Corpus, directed to respondents.
2. Hold a hearing to determine the issues presented by this petition.

DATE: May 28, 1998

RESPECTFULLY SUBMITTED

Arthur Arlo: Hayden, Jr.

Arthur Arlo: Hayden, Jr., In Propria Persona
P.O. Box 1167
Gridley, California 95948

Verification

State of California

County of Butte

Arthur Arlo: Hayden, Jr., being first duly sworn, deposes and says that he is the petitioner above-named and that the information contained in the above p[etition is true and correct to affiant's best knowledge and belief.

Arthur Arlo: Hayden, JR

Arthur Arlo: Hayden, Jr.

Subscribed and sworn to before me on May 28, 1998

Pauline Romano

Pauline Romano

FILED
FEB 27 1998
Cathy A. Catterson, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARTHUR ARLO HAYDEN, JR.,	)	No. 97-17313
Petitioner,	)	DC# CV-97-804-LKK
	)	Eastern California
vs.	)	(Sacramento)
	)	
TRUCKEE MUNICIPAL COURT,	)	ORDER
et al.,	)	
Respondents.	)	
_____	)	

Before: PREGERSON and LEAVY, Circuit Judges

The request for a certificate of appealability is denied.
See 28 U.S.C. Sec. 2253 (c) (2).

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.

mocal/2.24.98/fm.2

FILED
OCT 27 1997
CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIF.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARTHUR ARLO HAYDEN, JR.
Petitioner, No. CIV S-97-0804 LKK JFM P

vs.

TRUCKEE MUNICIPAL COURT, et al.,
Respondents,
_____/

CLOSED
DATE: OCT 27 1997
ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. Section 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. Section 636(b)(1)(B) and Local General Order No. 262.

On September 10, 1997, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendation were to be filed within twenty days. Petitioner has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. Section 636(b)(1)(B) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

APPENDIX B

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendation filed September 10, 1997, are adopted in full; and

2. The petitioner's application for writ of habeas corpus is summarily dismissed.

DATED: October 23, 1997.

s/_____

Lawrence K. Karlton

UNITED STATED DISTRICT JUDGE

/HAYDE804.804

NEVADA COUNTY COURTS Summary

10075 Levon Avenue, Suite 101, Truckee, CA 96161

The People of the State of California vs. Arthur A. Hayden, Jr., Defendant.

Docket No. : T95/589M

CONDITIONS OF PROBATION

The above named Defendant having been convicted of a misdemeanor or violation of Section 4571 PR, 4581 PR, IT IS HEREBY ORDERED:

IMPOSITION OF SENTENCE IS SUSPENDED; THE DEFENDANT IS PLACED ON: Summary probation granted: without supervision for a period of 3 years from date of this order, imposition of sentence is suspended.

CONDITIONS:

Report to Probation Dept. For Work Release Program for 20 days and pay applicable fee.

Pay fine and assessment fee in the amount of $1,021.00 plus restitution fine of $100.00. Fine to paid in full by 2-18-97.

ADDITIONAL CONDITIONS:

Defendant shall obey all rules and regulations in his lumber and logging pursuant to Public Resource Code.

Done in open court this 17 Day of December 1996.

s/ C. Anders Holmers

Judge of Above Entitled Court

I Understand, accept, and agree to abide by the above conditions of Probation which I've read and received. Signed under threat of duress and coercion, without waiving any rights on appeal.

Defendant s/_____

APPENDIX C

WORK RELEASE ORDER
MUNICIPAL COURT-TRUCKEE
STATE OF CALIFORNIA

The People of the State of California, Plaintiff

1. Dkt # T95/589M Charge 4571 PR
2. Dkt.#_____ Charge 4581 PR

vs.

Arthur A. Hayden, Jr.
DOB:_____

SENTENCE

The defendant has been convicted of a misdemeanor in the above numbered case for violation of sections 4571 PR, 4581PR and judgment has been pronounced against him that he serve:

20 days on Work Release Program. Report stayed to 1-17-97

Witness the Honorable s/ C. Anders Holmer
Judge of the Above-Entitled Court
By: s/ _____ Miller, Clerk
Dated this 17 day of December, 19 96

****

You must qualify for the program. Contact the Probation Department **immediately** to set up an appointment for an interview.

I understand that if I do not qualify for the program or if i fail to comply with program requirements, I must return to Court to be re-sentenced.

s/ _____
Defendant's Signature

APPENDIX C

FILED
97 Apr -4 AM 10:51
NEVADA COUNTY COURTS
s/_____DEPUTY

IN THE MUNICIPAL AND SUPERIOR COURTS OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA

ARTHUR ARLO: HAYDEN, JR.	)	CASE NO. 57804
Petitioner,	)	
vs.	)	ORDER DENYING PETITION
PEOPLE OF THE STATE OF CALIF.	)	FOR WRIT OF HABEAS
Respondent,	)	CORPUS
_____/		

The petition for writ of habeas corpus is denied.

Petitioner's contention that the State court proceeded with trial at a time when Petitioner's case had been removed to Federal court thereby depriving the State court of jurisdiction is without merit.

"The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which the prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded." 28U.S.C. section 1446(c)(3). Therefore, it was proper for the State court to conduct Petitioner's trial during the removal process. The State court did not enter judgment until the time of sentencing on December 17, 1996, which was after the Federal court had remanded the prosecution back to the State.

DATED: April 2, 1997. s/_____

Ersel L. Edwards
Presiding Judge of the Nevada County Courts

APPENDIX D

FILED
96 NOV 18 PM 4:49
NEVADA COUNTY COURTS
BY DS DEPUTY

IN THE NEVADA COUNTY COURTS OF THE STATE OF CALIFORNIA
IN AND FOR THE SUPERIOR COURT DIVISION

ARTHUR ARLO: HAYDEN, Jr.

CASE NO. TS96/671

Petitioner,

vs.

THE MUNICIPAL COURT FOR THE
COUNTY OF NEVADA, TRUCKEE DIVISION

Respondent,

_____/

RULING

The Alternative Writ of Prohibition is denied.

Dated: November 18, 1996

s/ Frank D. Francis
FRANK D. FRANCIS
JUDGE OF THE SUPERIOR COURT

APPENDIX D

FILED
Feb 27, 1997
Court of Appeal-Third District
Robert L. Liston, Clerk

IN THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
THIRD APPELLATE DISTRICT

Arthur Arlo Hayden, Jr.
Petitioner,

vs.

3 CRIM. C025829
Nevada T890589M

SUPERIOR COURT,
NEVADA COUNTY
Respondent
PEOPLE OF THE STATE
OF CALIFORNIA
Real Party in Interest

By the Court:

The notice of petition and petition for extraordinary remedy of alternative writ of prohibition is denied.

Dated: February 27, 1997

BLEASE, Acting PJ.

APPENDIX E

OFFICE OF THE CLERK

COURT OF APPEAL
THIRD APPELLATE DISTRICT
STATE OF CALIFORNIA

April 8, 1997

ARTHUR ARLO HAYDEN JR.
Post Office Box 1167
Gridley, CA 95948

Re: Arthur Arlo Hayden, Jr. vs.
Superior Court, Nevada County
3 Crim. C025829
Nevada County No. T890589M

Dear Sir:

The court has directed this office to return your "REQUEST FOR STATEMENT OF DECISION" UNFILED. There is no provision for filing this document in the Court of Appeal. A summary denial is final forthwith and no further filings may be accepted. (See Calif. Rules of Court, 24 (a).)

The court has also directed us to inform you that the appellate courts are not required to provide a statement of decision nor are they required to state reasons for summary denials of original proceedings. Therefore, no further explanation for the denial of this petition is available.

Very truly yours,
Robert L. Liston, Clerk
s/_____
Deputy Clerk

APPENDIX F

Supreme Court of California

Robert F. Wandruff
Court Administrator and
Clerk of the Supreme Court

9 April 1997

Arthur Arlo Hayden, Jr.
P.O. Box 1167
Gridley, CA 95948

Re: C025829 - Hayden v. Superior Court

Dear Sir:

We hereby return unfiled your petition for review, which we received today. A check of the Court of Appeal docket shows that the petition for a writ of prohibition was summarily denied Februar 27, 1997. This court lost jurisdiction to act on any petition for review March 31, 1997. (See Cal. Rules of Court, rules 28(a), 28(b).) Without this jurisdiction, this court is unable to consider your request for legal relief.

Very truly yours,
Robert F. Wandruff
Court Administrator and
Clerk of the Supreme Court
s/_____
by John C. Rossi
Assistant Clerk-Administrator

APPENDIX G

ENDORSED
FILED
JUL 15 1996
NEVADA COUNTY COURTS
BY DIANNA SMITH
DEPUTY CLERK

IN THE MUNICIPAL AND SUPERIOR COURTS OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NEVADA

THE PEOPLE OF THE STATE OF CALIFORNIA Plaintiff,	)	Case No. T95/589
vs.	)	
ARTHUR ARLO HAYDEN, JR. Defendants,	)	

The Court strikes the motion for disqualification filed by defendant on 7/15/96. The basis for the order is as follows:

1. The motion is untimely. The purported basis of the motion is a published notice of default prepared by defendant and published in a local newspaper without any underlying court action between defendant and the undersigned judge in a competent court of the state of California. The purported Notice of Entry of Default was

prepared and dated 5/8/96, and claims the undersigned judge is a debtor of defendant. Any disqualification based upon financial interest should have been brought earlier.

2. There is no basis in fact for the alleged financial interest. Defendant, in his self styled common law court has sough to create a liability where none exists, pursuant to valid court order or law. Accordingly, the statement of disqualification is a sham pleading, and is stricken.

Date: July 15, 1996 s/ C. ANDERS HOLMER

JUDGE OF THE NEVADA COUNTY COURTS

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this CASE and that a copy of the foregoing was mailed first class, postage prepaid, at Truckee, California, in a sealed envelope addressed as follows, and that the mailing of the foregoing and execution of this certificate occurred on Jul 16, 1996

FRED HOLMES, DDA
10075 LEVON AVE, SUITE 101
TRUCKEE, CA 96161

ARTHUR A. HAYDEN, JR.
P.O. BOX 1167
GRIDLEY, CA 95948

DIANNA SMITH

DIANNA SMITH, Deputy Clerk

APPENDIX H

COUNTY OF NEVADA
TROY E. ARBAUGH
SHERIFF-CORNER
03/28/97

ARTHUR A HAYDEN 106771141 25
P.O. BOX 1167
Gridley, CA 95948

NCSO Control No.: 0086097
DOCKET NO.: (TM) T95-589M MISD BW Fail to Appear for OSC

Dear Defendant:
The Nevada County Sheriff's Department has received a warrant for your arrest issued by the **Truckee Municipal Court**, Truckee, California. Please direct any questions concerning the issuance to the warrant to the **Truckee Municipal Court**, in person, by telephone (916) 582-7835 or by writing to the court C/O 10075 Levon Avenue, Suite #301, Truckee, CA 96161. Include you name, address and docket number on all written correspondence to the court.

VIOLATIONS	CODE Section	BAIL AMOUNT DUE
4571 PR; 4581 PR;	1203.2 PC	$25,000.00

You may avoid arrest and detention by immediately posting the abil amount shown above, or self surrender to the Nevada County Sheriff's Department, Truckee, California.
Post bail in the form of cash, money order, cashier's check, or bail bond made payable to the **Truckee Municipal Court**. Particial payments will not be accepted. A mandatory court appearanc is required. A court date will be assigned to you after the bail has been posted.
Sincerely,
C. Browning, Warrant Division, Nevada County Sheriff's Dept.

APPENDIX I

No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

_____

Arthur Arlo: Hayden, Jr. — PETITIONER

VS.

United States Court of Appeals for the Ninth Circuit, et al. —
RESPONDENTS

PROOF OF SERVICE

I, Merrie J. Hayden, do swear or declare that on this date, May 28, 1998, as required by Supreme Court Rule 29 I have served the enclosed NOTICE OF APPEAL-FROM FEDERAL COURT and PETITION FOR A WRIT OF HABEAS CORPUS on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

(Please See attached list of Respondents which is made a part hereof)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 28, 1998

Merrie J. Hayden

Merrie J. Hayden

UNITED STATES DISTRICT COURT
Eastern District of California
Office of the Clerk
650 Capitol Mall
Sacramento, CA 95814

CALIFORNIA STATE ATTORNEY GENERAL
1300 I Street
Sacramento, CA 95814

PEOPLE OF THE STATE OF CALIFORNIA
c/o MICHAEL W. FERGUSON, DISTRICT ATTORNEY
10075 Levon Avenue
Truckee, CA 96161

NEVADA COUNTY MUNICIPAL COURT
TRUCKEE, CALIFORNIA
10075 Levon Avenue
Truckee, CA 96161

NEVADA COUNTY SUPERIOR COURT
201 Church Street, Suite 5
Nevada City, CA 95959

TROY E. ARBAUGH
925 Maidu Avenue
Nevada City, CA 95959

Solicitor General of the Unites States
Room 5614, Department of Justice
950 Pennsylvania Ave,
N.W., Washington, DC 20530-0001

United States Court of Appeals
For the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Arthur Arlo: Hayden, Jr.	)	**No. 97-17313**
Petitioner,	)	
	)	
vs.	)	**DC# CV-97-804-LKK**
	)	**Eastern California**
Truckee Municipal Court, et al.,	)	**(Sacramento)**
Respondent.	)	
	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Arthur Arlo: Hayden, Jr., the Petitioner above-named, hereby appeals to the Supreme Court of the United States from the final Order of Appealability entered in this action on February 27, 1998.

This appeal is taken pursuant to Title 28, United States Code, Section 1253; S Ct Rule 18.

Dated: May 28, 1998

Arthur Arlo Hayden, Jr.

Arthur Arlo: Hayden, Jr., in pro se
P.O. Box 1167
Gridley, CA 95948